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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,974	02/08/2002	Lhing-Yew Li		3799

45453 7590 09/21/2006

BUCHANAN INGERSOLL PC  
(ARCHER DANIELS MIDLAND COMPANY)  
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PITTSBURGH, PA 15219

EXAMINER

STEADMAN, DAVID J

ART UNIT PAPER NUMBER

1656

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/067,974

Applicant(s)

LI ET AL.

Examiner

David J. Steadman

Art Unit

1656

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

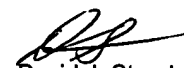
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 44.  
Claim(s) objected to: 34-36.  
Claim(s) rejected: 1-13, 15-23, 26-33, 37-39 and 43.  
Claim(s) withdrawn from consideration: 24 and 40-42.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
David J. Steadman, Ph.D.  
Primary Examiner  
Art Unit: 1656

Continuation of 3. NOTE: Prior to after-final amendment, claims 34 and 35 were ultimately dependent upon claim 1 and it was clear as to the nucleic acid that was present in the claimed host cells, i.e., the host cells of claims 34 and 35 were required to be transformed with the nucleic acid of claim 1. Instant claims 34 and 35 have been amended to be independent claims and upon closer inspection of the specification (p. 24, paragraph [0089]) it is noted that other than the host cells of newly added claim 45, i.e., NRRL-B30410, NRRL-B30458, NRRL-B30459, and NRRL-B30522 (specification at p. 31, paragraph [0107], p. 32, paragraph [0109], p. 33, paragraph [0111], p. 35, paragraph [0113], pp. 35-36, paragraph [0114]), it is unclear as to the characteristic(s) of the recited host cells, particularly with respect to the nucleic acid - if any - that is used to transform the recited host cells. As such, upon closer inspection of the amendment to claims 34 and 35 in view of the specification, the claims require further consideration and at least a new rejection under 35 USC 112, 2nd paragraph, as it is unclear as to the scope of host cells that are being claimed and how one of skill in the art distinguishes those host cells from any other *Brevibacterium flavum* or *Brevibacterium lactofermentum* host cell (claim 34) or *Corynebacterium glutamicum* host cell (claim 35). For example, are the host cells of claims 34-35 transformed with a vector comprising the nucleic acid of claim 1, a vector comprising some other nucleic acid(s), or are untransformed?

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's amendment filed on 25 August 2006 is acknowledged. Said amendment would appear to overcome the claim objection, the rejections under 35 USC 112, 2nd paragraph, and the new matter, written description, and scope of enablement rejections under 35 USC 112, 1st paragraph, and would appear to correct the deficiencies noted in the Advisory Action mailed on 9 August 2006. However, for the reason(s) noted in item 3 above, the amendment has not been entered.